



Hualapai Department of Cultural Resources

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HDCR 2017-149

Federal Communications Commission
Washington, DC 20554

RE: Proposed Rule: Accelerating Wireless Broadband Deployment by Removing
Barrier to Infrastructure Investment; WT Docket No. 17-79; FCC 17-38;
82 Fed. Reg. 21761 (May 10, 2017)

As Tribal Historic Preservation Officer (THPO) for the Hualapai Tribe, I am filing this comment letter to express support for comment memorandum filed in this matter by the National Congress of American Indians (NCAI), the United South and Eastern Tribal Nations Sovereignty Protection Fund (USET SPF) and the National Association of Tribal Historic Preservation Officers (NATHPO).

Over the past quarter century, due in large part to amendments enacted in 1992, the National Historic Preservation Act (NHPA) has become a very important federal law for preserving historic properties that are important for Indian tribes. As the NCAI-USET SPF-NATHPO comment memorandum points out, the Tower Construction Notification System (TCNS) has become “a model for how the federal government, Tribal Nations and industry can work together in a meaningful way that encourages infrastructure development while respecting tribal sovereignty.” If there are legitimate reasons for changing the TCNS, the FCC should begin by engaging in genuine consultation with Tribal Nations rather than charging ahead with rulemaking.

The Hualapai Tribe was one of the first tribes to have established a THPO program and to have assumed responsibilities for our tribal lands pursuant to an agreement with the Secretary of the Interior, as authorized by section 101(d)(2) of the NHPA as amended. Our THPO program has been operating for more than two decades. As authorized by sections 201 and 202 of the Hualapai Cultural Heritage Resources Ordinance (Ordinance), enacted by Tribal Council Resolution No. 13-98, the Director of the Hualapai Department of Cultural Resources (HDCR) serves as the THPO.

The Hualapai Reservation in northwestern Arizona, which was established by Executive Order in 1883, encompasses an area of about one million acres. This is about one-seventh of the homeland territory that the Hualapai people inhabited before the Reservation era. The Hualapai people continue to have cultural and religious connections with many places that are outside the boundaries of the Reservation, and so the Ordinance authorizes the Director

of HDCR to represent the Tribe in consultations with federal agencies and the State Historic Preservation Officer (SHPO) for federal and federally-assisted undertaking with the potential to affect historic properties located on Hualapai traditional use lands, i.e., lands outside Reservation boundaries. Accordingly, HDCR devotes a considerable amount of staff time and other resources to the review of proposed undertakings outside Reservation boundaries. Through participation in such reviews, HDCR has been able to identify a number of properties that have been determined eligible for listing on the Hualapai Register of Heritage Places.

The Hualapai Tribe is not a wealthy Tribe. Our annual grant from the National Park Service does not cover all of the costs for the operation of our THPO program, and HDCR administers other cultural heritage programs in addition to the THPO program. In recent years, HDCR has been able to avoid budget shortfalls by taking on an increasing amount of contract work, fulfilling a role similar to that of a consultant or contractor in developing information regarding historic properties. As recognized by the ACHP in its publication *Consultation with Indian Tribes in the Section 106 Review Process: A Handbook* (2012), it is perfectly appropriate for federal agencies, or non-federal applicants for federal action, to compensate tribal agencies for developing information for the section 106 process. Moreover, when developing the needed information involves conducting interviews with tribal elders in order to draw connections between a particular place and tribal oral traditions, a tribal agency is likely to be the most qualified source.

In our experience engaging in contract work, we have learned that there are transaction costs associated with negotiating agreements to perform such work. We have sought to reduce such transaction costs by adopting standardized fee schedules. In the specific context of the review of telecommunications infrastructure, we have adopted a fee schedule, which was updated on January 1, 2017. We have also adopted a protocol describing the information that HDCR requires telecommunications companies to submit in conjunction with requesting consultation with the Hualapai Tribe.

Thank you for your consideration of these comments. We strongly encourage the Commission decides to put this proposed rulemaking on hold and engage in meaningful government-to-government consultation with federally recognized Indian tribal governments

Sincerely,



Dawn Hubbs, Director/THPO

cc: Dr. Damon Clarke, Chairman
Hualapai Tribal Council